

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 04-66-A
)	
ORAL SUER,)	
)	
Defendant.)	

STATEMENT OF FACTS

It is agreed by and between the parties that the following facts are true:

The defendant, Oral Suer, served as the Executive Vice President of United Way of the National Capital Area (UWNCA) from 1974 until his retirement in January 2001. In that position he acted as the chief executive officer of UWNCA and managed the day to day operations of UWNCA. He reported to the Board of Directors of UWNCA, who determined his salary and terms of employment. At the time of his initial employment as Executive Vice President, he received a salary of \$45,000.00, plus benefits, which was gradually increased by the Board of Directors. From July 1989 until his retirement in January 2001, Oral Suer was paid a salary of \$196,000.00 per year by UWNCA. The defendant received 24 days of annual leave per year during the entire term of his employment. The defendant also participated in the pension plan of UWNCA. This was a defined benefit retirement plan administered by Mutual of America, an insurance company located in New York City, New York. The defendant, as Executive Vice-President of UWNCA, had a fiduciary responsibility for the pension plan, which was governed by the provisions of the Employee Retirement Income Security Act (ERISA).

1. Annual Leave Payments.

The UWNCA had a long standing policy of permitting employees to exchange unused personal annual leave for payment by UWNCA. The approval authority for such payments was Oral Suer. Leave records were maintained by the accounting department of UWNCA for all employees of UWNCA, with the exception of the Executive Vice-President. It was the practice of UWNCA, while the defendant was employed there, to allow the Executive Vice-President to maintain his own leave records, and no other records of his leave were kept by the UWNCA. Officially, the defendant never took a day of annual leave during his twenty-six year term of service as Executive Vice-President of UWNCA. In reality, the defendant frequently took annual leave that was never accounted for by the defendant.

An analysis of the accounting records of UWNCA by government investigators has established that the defendant was routinely paid by the UWNCA for “unused” annual leave which he had not earned. These payments were made to the defendant, at the direction of the defendant, who would inform the accounting department that he wished to be paid for a certain number of days of annual leave. An analysis of these accounting records has established that the defendant was fraudulently paid \$333,000.00 for annual leave which he had not earned from 1980 through January 2001. Since leave records for the defendant did not exist, investigators credited the defendant for 24 days of unused annual leave for most years. The only days the defendant was charged for annual leave were those dates which investigators had established through travel records that the defendant was out of the Washington, D.C. area on personal business during the years 1996 through 2001. Therefore, the \$333,000.00 amount represents the amount paid fraudulently to the defendant, in excess of the monies also paid to him by UWNCA as reimbursement for 24 days of unused annual leave for each year prior to 1996.

The defendant acknowledges that he intentionally defrauded UNWCA by directing and causing himself to be paid \$333,000.00 as reimbursement for unused annual leave which he had not earned. This included check number 498893, dated 1/26/01, drawn on UWNCA in the amount of \$33,949.74. This check represented payment, after withholding of taxes, for 18 days of sick leave and 54 days of “unused” annual leave. Before deducting taxes, the defendant was paid \$40,706.82 by UWNCA for the 54 days of “unused” annual leave. This payment was made by UWNCA at the direction of the defendant as Executive Vice-President just prior to his retirement. The amount of “unused” leave was a figure provided by the defendant to the personnel office of UWNCA. The defendant transported the check from the UWNCA headquarters in Washington, D.C. to a Sun Trust bank branch in Alexandria, Virginia where he deposited the check into his personal account.

2. Business Expenses.

The defendant was permitted to submit to UWNCA certain business-related expenses for reimbursement. This would include business travel for UWNCA, business meal expenses, and expenses involving the maintenance and operation of a car provided by UWNCA to the defendant. The defendant was required to submit documentation for those expenses.

Government investigators reviewed those expense account records for 1997 through the defendant’s retirement in 2001. That review and investigation established numerous fraudulent expense account submissions by the defendant to UWNCA that resulted in fraudulent payments to the defendant in the amount of approximately \$70,000.00. This figure includes payments for personal trips by the defendant and members of his family submitted to UWNCA as business trips. This would include trips to Las Vegas, Nevada, Orlando, Florida, and also trips to

Charlottesville and Richmond, Virginia. The defendant on some occasions submitted credit card receipts from which he had removed the top portion which reflected the vendor. For example, a receipt for \$146.25 was submitted with a handwritten note on the receipt reflecting the purchase of "computer items". In fact the purchase was at the "Strike Zone", a bowling establishment in Vienna, Virginia.

The defendant on several occasions submitted restaurant bills for payment two or three times. He charged repairs on his personal automobiles as repairs to the UWNCA car. The defendant frequently charged "conference expenses" for periods when there were no conferences. The defendant would in some instances be reimbursed by UWNCA for these expenses with checks. The defendant would receive these checks at UWNCA Headquarters in Washington, D.C. and then travel to Virginia where he would deposit the checks in his personal account at a bank branch located in Alexandria, Virginia. This included check number 59858 dated 12/2/99, in the amount of \$3,637.01, which included expense money obtained fraudulently by the defendant from UWNCA. These checks in aggregate total more than \$5,000.00, and the defendant acknowledges intentionally defrauding UWNCA as to expenses in the total amount of \$70,000.00.

3. Retirement Distributions.

In 1999, the defendant began exploring possible retirement from UWNCA. Because of scheduled changes to the interest rate used to calculate distributions from the retirement plan, the defendant was aware that if he retired later than 1999, he would receive a smaller monetary distribution. There was, consequently, a financial incentive to retire in 1999. The defendant was eligible in 1999 to retire under the rules of the pension plan. The Chairman of the Board of

Directors and the Chairman of its Finance and Administration Committee, aware of the defendant's possible retirement, urged the defendant not to retire before the Board of Directors identified a successor for the defendant. Also, the defendant was willing to continue his employment with UWNCA for approximately another year or two, to maintain his annual salary, health insurance and other benefits. The rules of the pension plan did not permit the defendant to take a lump sum distribution from the plan, and continue his employment at UWNCA.

The defendant, in early 1999, consulted outside counsel who represented UWNCA on pension plan issues. He was advised by this counsel that the plan could be amended by the Board of Directors to permit a lump sum in-service distribution to all participants who had the requisite age and years of service. Further, the participants in the plan would have to be notified of the changes, and it would have to be formally approved by a vote of the Board of Directors of UWNCA.

Prior to the drafting of such amendments to the pension plan, notification of other plan participants, and any vote by the Board of Directors, the defendant received a lump sum distribution of \$1,567,570.41 on June 3, 1999 by Mutual of America from the pension plan for a retirement effective June 1, 1999. This money was rolled over by the defendant into a personal IRA. The defendant accomplished this by causing the submission to Mutual of America of an application for retirement reflecting that the defendant was retiring from the UWNCA in May 1999. This was a false statement since the defendant was not retiring. He was in fact taking a lump sum in-service distribution and maintaining his employment as Executive Vice President of UWNCA. The documents submitted to Mutual of America were required to be kept as part of

the records of an employee pension benefit plan under the Employee Retirement Income Security Act (ERISA).

The defendant did not disclose this distribution to the Board of Directors. The outside law firm representing UWNCA ultimately drafted various amendments to the pension plan that were presented to the Board of Directors in December 1999. The amendments included a change to the plan that would permit a lump sum in-service distribution without retirement at age 64 and with the requisite years of service. The amendments as written were retroactive to July 1, 1999. When the amendments were presented to the Board of Directors on December 16, 1999, the board was not advised that the defendant had already taken a 1.5 million dollar lump sum distribution from the plan. The defendant, who attended the board meeting, was questioned about the changes to the pension plan by board members. Specifically, he was asked why the amendments were retroactive, and whether there was any cost in changing the retirement age in the plan. When answering the question as to retroactivity, the defendant answered that it was based on the fiscal year of UWNCA. He did not reveal the distribution to him on June 1, 1999. When answering the question as to the cost of the changes, the defendant responded there would not be any cost impact in changing the age to 64. He did not reveal to the board that he had taken a \$1.5 million withdrawal. In response to a question regarding the reason for the change, he stated that lowering the normal retirement age from 65 to 64, was the trend across the country. He never revealed to the board that the amendment was intended in part for his benefit, and that he had already withdrawn \$1.5 million from the pension plan. The defendant continued to accrue benefits under the pension plan following his June 1, 1999 lump sum in-service distribution. When he retired in January 2001, the defendant received a second distribution of

\$55,648.61. An actuary hired by UWNCA has determined that the defendant would have received \$1,528,940.04 in January 2001 if he had not received the June 1999 distribution. Based upon this analysis the parties are in agreement the loss for purposes of the Federal Sentencing Guidelines and restitution involving the pension totals \$94,278.98. This figure representing the difference between the amount actually paid to the defendant, and what he would have been paid in January 2001, if he had not taken the distribution in June 1999.

The parties are in agreement that the total loss figure for purposes of the Federal Sentencing Guidelines is \$497,278.98.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By:

Robert W. Wiechering
Assistant United States Attorney

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, Oral Suer and the United States, I hereby stipulate that the above

Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Oral Suer
Defendant

I am Oral Suer's attorney. I have carefully reviewed the above Statement of Facts with him/her. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Graeme Bush, Esquire
Attorney for Oral Suer